

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend

Settlors =
Son =
Trust =
Date =

Dear :

This letter responds to your letter dated September 28, 2011, requesting a ruling under § 2041(a) of the Internal Revenue Code.

On Date, Settlers established an irrevocable trust for the benefit of their two children. Pursuant to the terms of the trust, immediately upon the trust's creation, the trustee was to divide the trust estate into two equal separate shares, one for daughter and one for Son (Trust). The separate share for the benefit of Son is the subject of this letter ruling.

Under Article 2.2.1 of the Trust, until the death of the survivor of Settlers, a special trustee has discretion to distribute principal and income to Son, Son's spouse, Son's issue, and the spouses of Son's issue (collectively, Beneficiaries). Under Article 2.3, after the death of the survivor of Settlers, the trustee may distribute the principal and income of the Trust to Beneficiaries for their health, education, maintenance, and support. A special trustee also has discretion to distribute the principal and income of the Trust to Beneficiaries.

Under Article 2.3.3 of the Trust, upon Son's death, the trustee is instructed to distribute the principal and any accrued or undistributed income of the Trust to one or more of the group consisting of the "Settlers' issue," and on such terms and conditions, either outright or in trust, as Son shall appoint by a written instrument delivered to the trustee during Son's lifetime. Any balance of the Trust remaining and not effectively

appointed by Son upon Son's death will continue to be held by the trustee pursuant to the other provisions of the Trust.

Son has requested rulings that the testamentary power of appointment granted to Son in the Trust does not constitute a general power of appointment within the meaning of § 2041(b)(1) and, therefore, the existence, exercise, failure to fully exercise, or partial or complete release of Son's power to appoint the principal and any accrued or undistributed income of the Trust will not cause the value of the property in the Trust to be included in Son's gross estate under § 2041(a).

Section 2041(a)(2) provides that the value of the gross estate includes the value of all property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment is considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides, with exceptions not relevant here, that the term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that the term "general power of appointment" as defined in § 2041(b)(1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Section 20.2041-1(c)(1)(a) provides that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate.

In this case, Son has a testamentary power to appoint the principal and accrued or undistributed income of the Trust to the class consisting of "Settlors' issue." Because Son's power of appointment is a testamentary power, Son may not appoint any part of the Trust to Son or to Son's creditors during Son's life. In addition, based on the terms of the Trust, the reference to "Settlors' issue" as a permissible class of appointees of Son's testamentary power is properly viewed as not including Son's estate or the creditors of Son's estate after Son's death.

Accordingly, based on the information submitted and the representations made,

we conclude: (1) Son's testamentary power of appointment over the principal and accrued or undistributed income of the Trust does not constitute a general power of appointment within the meaning of § 2041(b)(1); and (2) the existence, exercise, failure to fully exercise, or partial or complete release of Son's power to appoint the principal and accrued or undistributed income of the Trust will not cause the value of the property in the Trust to be included in Son's gross estate under § 2041(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Leslie H. Finlow, Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes